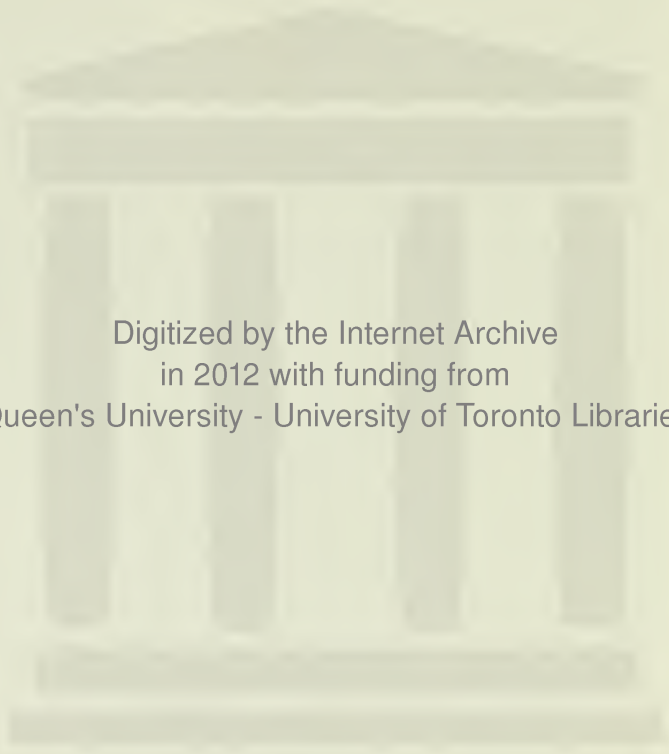


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OBSERVATIONS

R. Bell

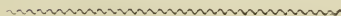
ON THE QUESTION OF

BRIDGING THE RIVER RICHELIEU,

ABOVE THE

TOWN OF ST. JOHNS,

FOR RAIL-ROAD PURPOSES.



Toronto :

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THE BUREAU OF RESEARCH

RESEARCH IN THE HISTORY OF

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OBSERVATIONS  
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As the above question now occupies the attention of the Legislature of this Province, it becomes essentially necessary to the proper and correct understanding of the case, before arriving at any final determination upon that important question, that the same should be considered, in all its bearings, as to its effects upon any treaty stipulations between this, or rather, the Mother Country, and the United States of America, by obstructing the navigable waters of the River Richelieu, upon the carrying trade, and the trade of the country generally, and its consequent effects upon our Canals and other public works, and lastly its effects upon local or sectional interests.

The remonstrants against this undertaking contend, firstly, that the Legislature cannot grant the demand made, except in open violation of existing treaties between Great Britain and the United States ; secondly, that it will materially impair and injuriously affect the navigation of that River and Lake Champlain ; and lastly, that the town of St. Johns will materially suffer, should a bridge be constructed at any point above it.

The first of these objections, if founded on fact, would be conclusive upon the question, and forever set it at rest ; but it can be satisfactorily demonstrated not to be the case, and in sup-



port of the latter proposition, it may be proper to quote the opinions of writers on public law, and the decisions of Courts of Justice, where this important question has been adjudicated upon. Vattel, that eminent writer on public law, in remarking on what he terms, "An incontestible right of navigation," which one nation may have on the waters of another, says:—(Laws of Nations, Book 1, Chap. 22, Sec. 273,) "This right necessarily supposes that the river shall remain free and navigable; and therefore must exclude every work that *will entirely interrupt* its navigation."

A partial obstacle, such as the contemplated bridge, which, it is intended, shall have a draw of larger size than any other in this Province, intended to promote other interests than those of navigation, but suited to its convenience, would not conflict with any treaty stipulations, and not so interfere with navigation as to come within the definition of what Vattel so properly styles an *entire interruption*, such, for instance, as would be produced by a bridge without any draw at all. The bill now before the Legislature, enacts that no works shall be erected except under the directions and subject to such provisions and conditions as the Government may choose to impose.

This, assuming M. Vattel's exposition of the law to be accurate, must afford a sufficient guarantee to the public that no works of an insufficient character will be erected by the Champlain and St. Lawrence Railroad Company.

In a case tried before the Supreme Court of the State of New York, of "The People *vs.* The Renselaer and Saratoga Railroad Company," reported in 15th Wendell, page 113, it was there adjudged that the draw-bridge over the Hudson River at Troy, although erected at a place where coasting vessels have a right to pass, is not an obstruction so entirely preventing or essentially impeding the navigation, as to be unlawful.

"By a free navigation," (said Chief Justice Savage, who delivered the opinion of the Court,) "must not be understood a navigation free from such partial obstacles and impediments as the best interests of society may render necessary." "I have already stated," he continues, "that the General Government and the State Government between them possess the Sovereign power and the Sovereign power may, doubtless, build bridges



where necessary." He adds, "A bridge with a draw, which shall be opened free of expense for every vessel sailing under a license as a coasting vessel, affords all the accommodation necessary for citizens in the vicinity, or for travellers, and *does not impede the navigation* in any essential degree."

The third article of the treaty between Great Britain and the United States stipulates "that it shall at all times be free to His Majesty's subjects and to the citizens of the United States and *also to the Indians* dwelling on either side of the boundary line freely to pass and repass by land or inland navigation into the respective territories and countries of the two parties on the continent of America, and to navigate all the lakes, rivers and waters thereof, and freely to carry on trade and commerce with each other." Now if the third article of the treaty of 1794 were still in force, the objection drawn from it to the proposed draw-bridge would be met by the quotation from Vattel and the decisions above mentioned. But that is very questionable; for all writers on the law of nations are clear in their opinion that a war between two countries abrogates all treaties between them: and such being the case, the war of 1812 may fairly be presumed to have set that point at rest.

Vattel, Book 3, chap. 10, Sect. 175, in laying down the general rule upon this subject says:—

"The conventions and treaties made with a nation are broken or annulled by a war between the contracting parties; either because those contracts are gounded on a tacit supposition of the continuance of peace, or because each of the parties being authorised to deprive his enemy of what belongs to him, takes from him those rights which he had conferred by treaty."

The late Henry Wheaton, a celebrated American Jurist, met, in the most direct terms, the objection attempted to be derived from the treaty of 1794 to a similar proposition for the construction of a bridge on Lake Champlain by saying that—"Treaties of friendship and alliance commerce and navigation, *even if perpetual in terms* expire of course (among other causes which he enumerates) in case of a war between the contracting parties, unless stipulations are made with a view to a rupture, such as the period of time allowed to the respective subjects to

retire with their effects, or other general limitations of the rights of war."

Such, he adds, is the stipulation contained in the 10th article of the treaty of 1794, between Great Britain and the United States.—(Wheaton's International Law, page 321.)

Having given the interpretation to this treaty of one of the contracting parties, i. e. the United States, let us now see how Great Britain (the other contracting party) understood it. On the occasion of a correspondence between the United States Government in 1815—1816, on the claim urged by the American minister to the right of American fishermen to catch and cure fish within certain British jurisdiction, upon the plea that the treaty of 1783, which permitted them to do so, was of a peculiar character, establishing that liberty as a right; to illustrate his position, he adverted to demands made by British Commissioners at the Conferences of Ghent for the free navigation of the Mississippi River. Lord Bathurst, one of the Secretaries of State, in his reply, dated October 30th, 1815, expresses himself as follows, both as to the general effect of a war upon treaties, and the rupture, in 1812, on the British privilege of navigating the Mississippi:

"It has been urged indeed on the part of the United States, that the treaty of 1783, was of a peculiar character, and that because it contained a negociation of American independance, it could not be abrogated by a subsequent war between the parties. To a position of this novel nature Great Britain cannot accede. *She knows no exception to the rule, that all treaties are put an end to, by a subsequent war between the same parties.*" "She cannot therefore consent to give to her diplomatic relations with one State a different degree of permanency from that on which her connexion with other States depends." Still less," he adds "does the navigation of the Mississippi, as demanded by the British commissioners at Ghent, in any manner express or imply the non-abrogation of the treaty of 1783 by the subsequent war."

Much more could be said and quoted upon this first objection of the remonstrants, but the high and conclusive authorities quoted above, will, it is respectfully apprehended, have satisfactorily established its futility.

Now to the second objection, that it will materially impair and injure the navigation.

Vessels now navigating between the Western Lakes and Lake Champlain, and *vice versa*, (without taking into account the numerous draw-bridges they have to go through in the Welland, Beauharnois and Lachine Canals) after leaving Montreal, have to go through two draw-bridges *in the very same river*; one, the Portland Railroad bridge, at Belœil, and the other at St. Johns, better known as Jones' Bridge, besides six more on the Chambly Canal itself. The draws in both the bridges are only forty-five and twenty-four feet wide, and the draw to the former is most inconveniently placed in the river, which at that point is about nine hundred feet wide.

The bridge, for the building of which permission is now solicited, is in a part where the river measures but about eight hundred feet wide, and the proposed draw to it is intended to be at least sixty feet in width. If vessels can pass eight draw-bridges (and those very imperfect) between Montreal and Lake Champlain, assuredly it cannot be contended with any degree of justice, that an additional and superior and wider draw-bridge, constructed, properly speaking, under the directions and control of the Government, can offer such serious objections? Again, that part of the River Richelieu between Rouse's Point and St. Johns, cannot now be navigated in safety after nightfall, and vessels have now to lie at that Point over night, before being able to resume their journey to St. Johns. If piers be built with a space between them, with a floating-bridge or scow, on the American side of Lake Champlain, (and by-the-by it is ascertained that that measure, which originated in and passed the Senate of New York, has also been carried in the House of Representatives, by a majority of 71 against 20) or by the Champlain and St. Lawrence Railroad Company at Ash Island, four miles within the line forty-five, it is quite clear, that for the future, the foot of the Lake navigation, for all heavy and passenger business at least, must terminate at that point, from which passengers and goods will be landed in Montreal, in about an hour and a quarter; whilst under the present mode of travelling five or six hours are employed to perform the same journey by water.

Without at all wishing to impugn the motives of the remonstrants, who are chiefly from St. Johns, the reasons which actuates them in their opposition will be readily understood. It is also strenuously objected, that the timber trade is to receive a serious blow from the construction of this additional bridge.

It is very well known that nearly all the timber which goes to Sorel is manufactured on the River Ottawa, above Bytown, and before reaching that point, must be taken through one or more slides, in cribs from thirteen to sixteen feet wide. It is then towed from Sorel up to Lake Champlain, and must pass through the eight draw-bridges above mentioned; and again it is respectfully submitted, if another and a better draw-bridge, whether it be above or below St. Johns, can injuriously affect that branch of trade at all? The Portland Railroad has a drawbridge, and a very imperfect one: the Province has been compelled to guarantee £400,000—the City of Montreal £125,000, to build it—to give Canada a free and easy communication with the Atlantic ports at all seasons of the year. The Champlain and St. Lawrence Railroad Company, at an expense of one million two hundred thousand dollars, have and are constructing *at their own expense, and without aid from any one*, a road and wharfs which will connect the City of Montreal with Boston and Portland before the lapse of another month, and in a short time with New York, by the west side of Lake Champlain. Yet, in the face of all this, we are told, and that too by parties interested as proprietors in St. Johns, and others interested in the Portland Railroad, (who already have a bridge over the same river) that an additional and better bridge must prove a serious impediment to the navigation.

By others it is contended, that if a bridge is built by the Americans at Rouse's Point, the Champlain and St. Lawrence Railroad should avail themselves of it, and that one bridge will, for all purposes, be amply sufficient. Those who make this objection may not be aware that when the line from Montreal to Rouse's Point is complete (and that will be before the close of the present navigation) the Champlain and St. Lawrence Railroad will be a formidable competitor of the Ogdensburgh road, who now competes with the Erie Canal. It may not be generally known that freight from the West can be floated down



to Montreal as cheap as to Ogdensburg, from the circumstance that a return freight can always be obtained at the former, whilst none can be had at the latter place. Such being the case, and the two Companies starting respectively from Montreal and Ogdensburgh, on a footing of equality, as regards the cost of transport to those two places, how will the Ogdensburgh road compete with the Montreal road when the former has one hundred and twenty miles to reach Rouse's Point and the latter only forty-two miles? Can it be supposed, under such circumstances, that the Ogdensburgh road will give the Champlain and St. Lawrence Railroad a passage over its bridge on any account and at any price? Most clearly not, and unless Canada can build a bridge on its own side of the line, the competition for the trade of the West is placed beyond the reach of Canadian competition. Let it here be remarked, that all the produce from the West, which will be carried over the Champlain and St. Lawrence Railroad, will have paid toll upon the whole of our Canals from Lake Erie to Montreal, and that in that point of view the country generally will derive more benefit from this bridge than is imagined; an advantage which will fully counterbalance the slight injury and disappointment which its construction may cause to the inhabitants of the small town of St. Johns. The immense advantages which will result to Canada from uninterrupted communications with Atlantic ports the whole year round, will be better appreciated during that inclement portion of the year when all communications were hitherto interrupted by frost and ice, which closed our navigation for nearly half the year.

Within the last two or three years, a charter was granted to a Railroad Company to build another bridge at St. Johns itself, over the same river. At the present time the construction of a bridge over the River St. Lawrence, opposite the City of Montreal, is canvassed, and it will hardly be believed, that some of the foremost in the advocacy of that scheme have been the first to remonstrate against the proposed bridge.

As to the effect upon the trade of the country generally, it may be here proper to quote from a most able Report, on this same subject, made by Senator Owens to the Senate of New York, upon this very question, on the 28th January, 1851.

This learned Senator, who was one of the most inveterate opponents of a bridge over Lake Champlain, in summing up his reasons for opposing the measure, thus recapitulated his objections:—

“Weighing all the evidence and arguments that have been presented—considering the history of this road from its infancy, and the relation it sustains, not only to our own State and to those of New England, but to the British Provinces, the undersigned cannot but regard this application as in a great degree suicidal to the interests of the State of New York to permit the construction of this bridge.”

“Because it would, beyond all doubt, greatly injure and probably circumscribe a navigation that now is a great and growing tributary to all public works.”

“Because it would render useless in time of war, the large and expensive fort which is in progress of construction between the point where the bridge is proposed to be built and the British Province.”

“Because it would direct the commerce of the Canadas, a great part of which now finds its way to the seaboard through the Champlain Canal, into other channels.”

“Because in its aid of Boston to the prejudice of New York, in her attempts to secure the trade of the Western lakes, it would oblige the western people to pay tolls on the Welland Canal to a *foreign nation* instead of our own State.”

“Because it would tend to transfer a large share of the carrying trade upon the lakes from American to British vessels.”

“Because, instead of the increased revenue to be realized by our canals from the construction of the Northern Railroad, so long and repeatedly promised, if this bridge should be built, it would injuriously affect and reduce the tolls.”

“Because it would, to an extent sufficient to warrant the worst apprehensions, draw the trade and commerce *away from* instead of *into the State*, and that too at a time when the Erie Canal enlargement is yet incomplete, and when a debt of \$16,000,000 rests upon our people, for improvements already made.”

“Wisdom, justice and sound policy would seem most strongly to forbid this self-sacrifice of the interests of our people, how-

ever magnanimous it might be regarded to promote the interests and claims of another State, in their revenues and commerce, a rival people."

If the predications of Senator Owens are realized, and the result of the operations of the Ogdensburg Railroad has fully sustained them, for an enormous quantity of produce has been and is daily transported over it, which has paid tolls to the Welland Canal, how much more will the accuracy of his reasons be demonstrated when freight will be conveyed at a still reduced rate over the road at Montreal, for which an outlet to the Atlantic ports by a bridge over the Richelieu is now sought—and which, as a necessary consequence will have, before reaching Montreal, to pay tolls to the *whole of our Canals*. As to the third objection, that it will affect the value of property in St. Johns—when compared to the private advantages which are sure to result to the country at large from the construction of this bridge,—that must be dismissed without any further notice. Under the circumstances it is hoped that the permission now solicited will be accorded to the Champlain and St. Lawrence Railroad Company ; more particularly as the several Legislatures of the States of New York and Vermont have granted to their people the privilege now sought to be obtained in Canada, and that too in a part of Lake Champlain avowedly (on account of its width at that point) much more objectionable than the bridging of the River Richelieu in its narrowest part.

It was not enough that the application to bridge the Richelieu River should be opposed by some of our own people ; but forsooth, it was necessary that an Agent from Burlington, in the State of Vermont, should also be despatched to Canada to join in the remonstrance. The opposition from that quarter can also be explained. The Champlain and St. Lawrence Railroad Company connects at Rouse's Point with the Vermont Central Railroad, which has the misfortune to run in opposition to the Burlington and Rutland Railroad ; a road which does not come up to Lake Champlain at all, and the Agent in question representing the interests of the former Company, came to Canada to remonstrate also, more with a view to thwart the promising prospects of a railroad than any thing else. And with what grace will any man from the United States, and



especially from Vermont, come to Canada and oppose a privilege, which was granted by that State after mature deliberation without the slightest regard to any other interests than its own? It is much to be regretted that that road has so far been unable to reach the Province Line, where the Champlain and St. Lawrence Railroad Company would have been happy to obtain that connexion also; assured that if circumstances had rendered that possible, no objections could have been met in that quarter.

This means of submitting the points in controversy has been resorted to in consequence of the extraordinary means adopted by some of the parties interested in defeating the measure now before Parliament. The press in some instances, and no later than this day, has been unwittingly deceived, and induced to state that the New York Legislature had, by a majority of 70 against 20, rejected the Bill for bridging Lake Champlain at Rouse's Point, when the very reverse was the case. New York has now affirmed what Vermont had previously done, the proposition of constructing a bridge at the Point above mentioned, by a decision of 70 against 20; if at least the Report of the proceedings of that State are accurately reported by every Journal published in Albany.

It therefore is a settled question in the United States, which have permitted the bridging of the Lake, leaving an intermediate space of 250 feet free in deep water, for the passage of vessels, &c., which space is to be covered with a floating bridge or scow, which will be frozen in in winter, and consequently serve all the practical purposes of a solid bridge at all seasons of the year.

Toronto, 2d July, 1851.







